

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

1. JOHN FOX and)
)
2. BARBARA FOX,)
)
Plaintiffs,) Case No. CIV-17-1228-W
)
vs.)
)
1. COUNTRY FINANCIAL)
INSURANCE COMPANY,)
)
Defendant.)

NOTICE OF REMOVAL

TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE
PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant, Country Financial Insurance Company (“**CFIC**”), hereby submits its Notice of Removal. In support of its Notice of Removal, CFIC alleges and states as follows:

1. The above-captioned matter is a civil action currently pending in Oklahoma County District Court, State of Oklahoma. *See* Plaintiffs’ Petition attached hereto as **Exhibit 1**. This civil lawsuit falls within this Court’s original jurisdiction pursuant to 28 U.S.C. § 1332(a). Accordingly, it can be removed to this Court by CFIC pursuant to the provisions of 28 U.S.C. § 1441, because it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

2. On November 1, 2017, Plaintiffs, John and Barbara Fox (“**Plaintiffs**”) commenced a civil action in the District Court of Oklahoma County, State of Oklahoma, styled as *John Fox and Barbara Fox v. Country Financial Insurance Company*, Case No. CJ-2017-6272. *See Exhibit 1.*

3. On November 3, 2017, CFIC was served with a copy of the Summons and Petition through the Oklahoma Insurance Department via certified mail. *See Summons Returned Executed attached as **Exhibit 2.***

4. Plaintiffs bring the current lawsuit pursuant to a home insurance policy issued by CFIC. Plaintiffs allege that on November 7, 2016, their property sustained earthquake damage. As a result of said damage, Plaintiffs submitted a claim to CFIC under policy number A35K7883601. Plaintiffs state that they made their premises available for investigation to CFIC and complied with all conditions of the subject insurance policy. *See Exhibit 1, at ¶¶ 1-3.*

5. Plaintiffs further allege that CFIC breached the subject insurance contract by wrongfully denying Plaintiffs’ property damage claim and recklessly disregarded and/or intentionally and with malice breached the implied covenant of good faith and fair dealing. *See Exhibit 1, at ¶¶ 4-5, and 7.* As a result of the alleged breach of contract and breach of the implied covenant of good faith and fair dealing, Plaintiffs allege they have suffered the loss of policy benefits, loss of the coverage, embarrassment, anxiety, frustration, mental and emotional distress, and other incidental damages. *See Exhibit 1, at ¶ 6.*

6. In their Petition, Plaintiffs “demand judgement against Defendant, Country Financial Insurance Company, in an amount in excess of \$75,000.00 for compensatory damages and in an amount in excess of \$75,000.00 for punitive damages” *See Exhibit 1.* Accordingly, it is undisputed that the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

7. As to the question of diversity between the parties, Plaintiffs are residents of the state of Oklahoma. *See* Insurance Declarations Page attached hereto as **Exhibit 3.** CFIC is a foreign corporation incorporated under the laws of the State of Illinois with its headquarters and principal place of business in Illinois. Therefore, there is complete diversity of the parties and this matter is properly subject to removal to federal court.

8. The Notice of Removal is filed within thirty (30) days following the receipt by CFIC of Plaintiffs’ Summons and Petition. Therefore, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446. *See Exhibit 2.*

9. Removal of this case is proper pursuant to 28 U.S.C. §§ 1441 and 1446, in that there is complete diversity of citizenship between Plaintiffs, Oklahoma residents, and CFIC, a foreign corporation. Further, the amount in controversy exceeds the amount of \$75,000.00, exclusive of interest and costs. Therefore, this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a).

10. CFIC expressly does not waive any of the defenses and objections set forth in Rule 12(b) of the Federal Rules of Civil Procedure.

11. All state court papers filed in this action at the time of removal and the docket sheet are attached hereto as **Exhibit 4.**

12. Written notice of the filing of this Notice of Removal will be given promptly to the Plaintiffs, and a copy of the Notice of Removal will be filed with the Clerk of the District Court of Oklahoma County, State of Oklahoma as provided by 28 U.S.C. § 1446(d).

WHEREFORE, Defendant, Country Financial Insurance Company requests that this action be removed to the United States District Court for the Western District of Oklahoma.

Respectfully Submitted,

WILBURN, MASTERSON & FLEURY

By

s/David R. Fleury

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CERTIFICATE OF MAILING

I, David R. Fleury, hereby certify that on this 15th day of November, 2017, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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s/David R. Fleury _____
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